

BAM/11/#1090233

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN G. HNATOWICZ and ANNE
HNATOWICZ.

Civil Action No.08CIV4348

VERIFIED ANSWER

Plaintiffs,

TA-07-11-10-11-001

-against-

THE CITY OF NEW YORK,

Defendant .

Defendant, THE CITY OF NEW YORK, for its verified
answer to the verified complaint of the plaintiffs herein:

1. Denies that it has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph(s) of the verified complaint numbered 1 and 2.

2. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 7, 9 and 11 except admit(s) that a certain paper purporting to be a notice of claim was received by the office of the Defendant, THE CITY OF NEW YORK; within ninety days of the alleged occurrence herein; that more than thirty days elapsed since receipt thereof and said matter remains unadjusted and unpaid; and that less than one year and ninety

days has elapsed from the alleged happening of the occurrence herein until the commencement of this action.

3. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 8.

ANSWERING A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF, STEVEN G. HNATOWICZ

4. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 13, 14, 17, 20, 21, 22, 23 and 24.

5. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 19 leaving all questions of law to the Court.

ANSWERING A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, STEVEN G. HNATOWICZ

6. Answering paragraph numbered 25 of the verified complaint, Defendant, THE CITY OF NEW YORK, repeat(s) and reiterate(s) each and every denial heretofore made herein with the same force and effect as though fully set forth herein.

7. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 26.

**ANSWERING A THIRD CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, STEVEN G. HNATOWICZ**

8. Answering paragraph numbered 27 of the verified complaint, Defendant, THE CITY OF NEW YORK, repeat(s) and reiterate(s) each and every denial heretofore made herein with the same force and effect as though fully set forth herein.

9. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 28.

**ANSWERING A FOURTH CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, STEVEN G. HNATOWICZ**

10. Answering paragraph numbered 29 of the verified complaint, Defendant, THE CITY OF NEW YORK, repeat(s) and reiterate(s) each and every denial heretofore made herein with the same force and effect as though fully set forth herein.

11. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 30, 31, 32 and 33.

**ANSWERING A FIFTH CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, ANNE HNATOWICZ**

12. Answering paragraph numbered 34 of the verified complaint, Defendant, THE CITY OF NEW YORK, repeat(s) and reiterate(s) each and every denial heretofore made herein with the same force and effect as though fully set forth herein.

13. Denies that it has any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph(s) of the verified complaint numbered 35 and 36.

14. Denies, upon information and belief, each and every allegation contained in paragraph(s) of the verified complaint numbered 37.

FOR A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF ACTION OF PLAINTIFFS AND IN DIMINUTION OF DAMAGES, DEFENDANT, THE CITY OF NEW YORK, ALLEGE(S), UPON INFORMATION AND BELIEF:

15. That whatever injuries or damages the plaintiffs may have sustained at the time and place mentioned in the verified complaint, were caused, in whole or in part, by the culpable conduct of the said plaintiffs, said culpable conduct having contributed thereto.

16. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the said culpable conduct attributable to plaintiffs, bears to the culpable conduct which caused the said damages.

FOR A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF ACTION OF PLAINTIFFS AND IN DIMINUTION OF DAMAGES, DEFENDANT, THE CITY OF NEW YORK, ALLEGE(S), UPON INFORMATION AND BELIEF:

17. Any award for recovery of the cost of medical

care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss claimed by plaintiffs shall be reduced to the extent that any such cost or expense was or will with reasonable certainty be replaced or indemnified from any collateral source pursuant to CPLR 4545.

**FOR A THIRD SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFFS,
DEFENDANT, THE CITY OF NEW YORK,
ALLEGED(S), UPON INFORMATION AND BELIEF:**

18. That whatever injuries the plaintiff may have sustained at the time and place mentioned in the verified complaint, were caused, in whole or part, by the culpable conduct including but not limited to assumption of risk, if applicable, of the said plaintiffs, said conduct having contributed thereto of the said plaintiff, said culpable conduct having contributed thereto.

19. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the said culpable conduct including but not limited to assumption of risk, if applicable attributable to the plaintiff bears to the culpable conduct which caused the said damages.

**FOR A FOURTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFFS,
DEFENDANT, THE CITY OF NEW YORK,
ALLEGED(S), UPON INFORMATION AND BELIEF:**

20. THE CITY OF NEW YORK, its agents, servants or employees, did not take part or direct any of the acts complained of which resulted in plaintiff's injuries.

**FOR A FIFTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED
CAUSE(S) OF ACTION OF PLAINTIFF(S),
DEFENDANT(S), THE CITY OF NEW YORK,
ALLEGED(S), UPON INFORMATION AND BELIEF:**

21. Plaintiffs STEVEN G. HNATOWICZ and ANNE HNATOWICZ herein have failed to state causes of action in compliance with sections 200, 240(1) and 241(6), et seq. of the Labor Law of the State of New York, against the defendant, THE CITY OF NEW YORK.

WHEREFORE, Defendant, THE CITY OF NEW YORK, demand(s) judgment dismissing the verified complaint of the plaintiffs with costs.

WALLACE D. GOSSETT
Attorney(s) for Defendant
THE CITY OF NEW YORK
Office and Post Office Address
130 Livingston Street
Brooklyn, New York 11201
(718)694-3884

BY: _____
BRIDGET MULVENNA (7989)

VERIFICATION AFFIRMATION

The undersigned, an attorney associated with **WALLACE D. GOSSETT**, attorney for Defendant, **NEW YORK CITY TRANSIT AUTHORITY** herein, states that she has read the foregoing **VERIFIED ANSWER** and the same is true to her knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters she believe(s) them to be true. Deponent further states that the sources of her information and the grounds of her belief are the books, records and papers of the said Defendant relating to the matter in issue and/or statements made by the officers, agents and employees of the Defendant and that the reason why this verification is not made by the Defendant is that the Defendant is a public benefit corporation(s).

The undersigned affirms that the foregoing statements are true, under penalties of perjury.

Dated: Brooklyn, New York
June 26, 2008

BRIDGET MULVENNA

ATTORNEY AFFIRMATION

BRIDGET MULVENNA, hereby affirms the following under penalties of perjury:

That she is an attorney and counselor-at-law admitted to practice in the Courts of this State.

That on 26 day of June, 2008, affirmant served the VERIFIED ANSWER, hereto annexed on BORCHERT, GENOVESI, LaSPINA & LANDICINO, P.C., attorney(s) for plaintiff, by depositing a true copy thereof properly enclosed in a securely closed and duly post-paid wrapper in a post office box regularly maintained by the government of the United States under the care of the Post Office at 130 Livingston Street, Brooklyn, New York 11201, directed to said attorney(s) at 19-02 Whitestone Expressway, Suite 302, Whitestone, New York 11357, that being the address within the State designated by said attorney(s) for the purpose of service upon the preceding papers in this action.

Dated: Brooklyn, New York
June 26, 2008

____/s/ Bridget Mulvenna
BRIDGET MULVENNA